

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ADELPHIA RECOVERY TRUST,)
)
 Plaintiff,) No. 05 Civ. 9050 (LMM)
)
 vs.)
)
 BANK OF AMERICA, N.A., *et al.*,)
)
 Defendants.)
-----x

**RESPONSE OF ADMINISTRATIVE AGENT LENDERS AND CERTAIN INVESTMENT
BANKS TO NON-AGENT LENDERS' MOTION FOR ENTRY OF FINAL JUDGMENTS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 54(B)**

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The Administrative Agents and certain Investment Banks¹ (collectively, the “Responding Bank Defendants”) file this Response to the Non-Agent Lenders’ Motion for Entry of Final Judgments Pursuant to Federal Rule of Civil Procedure 54(b) (the “54(b) Motion”), seeking partial final judgment as to the Bankruptcy Claims² (Counts 1-16, 33, 41-44 and 49-52) and the Other Dismissed Claims (Counts 34-35, 45-48) (the “54(b) Motion”). A separate group of defendant lenders (the “Other Agent Lenders”) filed a Response of Various Lenders to Non-Agent Lenders’ Motion for Entry of Final Judgments Pursuant to Federal Rule of Civil Procedure 54(b) (the “Response”) on July 21, 2008, arguing that to the extent the Court determines a partial final judgment is appropriate such judgment should extend to all defendants sued on the Bankruptcy and Other Dismissed Claims. The Responding Bank Defendants share the concerns raised in the Response. The Responding Bank Defendants do not take a position on whether the Court should grant a partial final judgment on the Bankruptcy and Other Dismissed Claims. However, should the Court decide that such relief is warranted at this time, the Responding Bank Defendants request that such partial final judgment be entered as to the Bankruptcy and Other Dismissed Claims in their entirety, not just as to the Non-Agent Lenders or the Other Agent Lenders. Indeed, it would be improper to enter a partial final judgment under Rule 54(b) only as to the Non-Agent and Other Agent Lenders on claims that have been or should be dismissed as to all defendants.³

¹ The Administrative Agents include Bank of America, N.A.; Wachovia Bank, National Association; and Bank of Montreal. In addition, the Investment Banks represented by Cleary Gottlieb Steen & Hamilton LLP, as noted below, and Wachovia Capital Markets LLC (f/k/a Wachovia Securities, Inc.) and BMO Capital Markets Corp. join this response in relation to Count 33, Equitable Disallowance/Equitable Subordination.

² Unless otherwise noted, defined terms are adopted from the 54(b) Motion.

³ Judge Gerber’s June 11, 2007 decision dismissing the Other Dismissed Claims expressly grants the Responding Bank Defendants’ motions to dismiss and any partial final judgment on the Other Dismissed Claims should include the Responding Bank Defendants. Further, this Court’s June 17, 2008 decision dismissed the Bankruptcy Claims for lack of standing (the “Standing Decision”). This Court’s reasoning in the Standing Decision applies equally to all

Where the court has dismissed a claim on a ground that applies equally to all defendants a partial judgment under Rule 54(b) should be directed as to the entire claim, not just select defendants. *See Curtiss-Wright Corp. v. General Elec. Corp.*, 446 U.S. 1, 8 (1980) (holding that certification under Rule 54(b) is proper where the District Court determines that no appellate court would have to decide the same issues more than once in the event of subsequent appeals).

Conclusion

For the reasons outlined above, the Responding Bank Defendants respectfully ask this Court to (1) dismiss the Bankruptcy Claims as to all defendants; and (2) should the Court determine that a partial final judgment under Rule 54(b) is appropriate, enter final judgment on the Bankruptcy Claims and the Other Dismissed Claims as to all defendants sued on such claims. The Responding Bank Defendants request such further relief to which they may be entitled.

defendants sued on the Bankruptcy Claims and requires dismissal of the Bankruptcy Claims as to all defendants, including the Responding Bank Defendants. Because the grounds for dismissal of the Bankruptcy Claims apply equally to all defendants, any partial final judgment on the Bankruptcy Claims should include the entire claim rather than select parties.

Dated July 23, 2008
New York, New York

Respectfully Submitted,

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